Before the
FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of	)	
	)	
Telecommunications Services	)	CS Docket No. 95-184
Inside Wiring	)	
	)	
Customer Premises Equipment	)	
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In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	MM Docket No. 92-260
and Competition Act of 1992:	)	
	)	
Cable Home Wiring	)	
	)	

COMMENTS OF CABLEVISION SYSTEMS CORPORATION ON FURTHER NOTICE OF PROPOSED RULEMAKING

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COMMENTS OF CABLEVISION SYSTEMS CORPORATION ON FURTHER NOTICE OF PROPOSED RULEMAKING

Cablevision Systems Corporation ("Cablevision") submits these comments on the FCC's Further Notice of Proposed Rulemaking in this proceeding[1/] to address several points of immediate concern to Cablevision as a cable operator that operates primarily in highly urbanized markets such as Boston, New York City and Cleveland, and is currently engaged in vigorous competition in multiple dwelling units ("MDUs").

1/ In the Matter of Telecommunications Services Inside Wiring, Customer Premises Equipment; In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring, CS Docket No. 95-184 and MM Docket No. 92-260, FCC 97-304 (rel. August 28, 1997) ("Further Notice").

INTRODUCTION AND SUMMARY

Cablevision in its comments addresses the practical impact of the FCC's proposals in its Further Notice. If adopted, the FCC's proposals will result in a mandatory transfer of cable operator assets – distribution wire and feeder plant – at artificially low prices to competitors that are unwilling to invest in their own distribution facilities. Cablevision proposes that the FCC adopt several measures to alleviate unfairness to cable operators resulting from the forced sale of facilities under the FCC's proposed onerous schedule for disposing of inside wiring.

The problem created by the FCC's proposed procedures for disposing of inside wiring is that they enable an entity seeking to replace an existing cable operator to obtain the incumbent provider's wiring at greatly reduced or no cost. The cable operator is forced to quickly decide whether to sell the wire, remove it at great expense, or abandon it. Expensive removal costs will certainly drive down any price negotiated by the parties. If removal costs are high enough the overbuilder may be able to refuse to buy the wiring at any price and then get it for free when the incumbent abandons it.

A landlord less interested in ensuring that tenants have a choice of competing providers than obtaining a premium for auctioning the building will be willing to grant exclusive arrangements for which competitors to the cable operator in the MDU will be willing to pay substantial premiums simply because they will be able to obtain wiring at below-market rates. Because of the perverse incentives created by the FCC's rules, the cable operator will ultimately finance the premium that leads to the exclusive arrangement between the landlord and its competitor. As described below, the very incentives created by the FCC's rules will deny the benefits of two-wire competition to MDU subscribers.

Cablevision's comments are addressed to the following three points:

First, the FCC correctly concludes that its proposed procedural mechanisms should not preempt a cable operator's right to remain on the premises against the MDU owner's will under state statute or contract. In the same breath, however, the FCC proposes to adopt a presumption that the cable operator has no such right, which results in the operator losing whatever substantive rights it has by the operation of the proposed procedures. The result will often be the same as if the FCC had outright preempted the individual laws of all 50 states, including access-to-premises states that have explicitly determined that tenants have the rights to continued video service from the incumbent cable operator, and an additional interest in keeping the cable operator connected for delivery of two-way services such as pay-per-view video, Internet access and telephony.

Second, since the FCC's proposed procedural mechanisms skew the bargaining process in favor of the MDU owner and new video provider, the FCC should adopt measures to ensure a fair price. A default price set at a minimum of $150 per unit passed is the most workable and fair solution.

Finally, the FCC should adopt procedures that prevent its proposals from giving landlords the incentives and the tools to auction their MDUs to the highest bidder, with the prize being the MDU's inside wiring at below-market or reduced cost. The FCC can discourage such anticompetitive and anti-choice behavior by making its proposed procedures available only where the landlord does not receive a premium from a new provider above any cost of its entry.

ARGUMENT

I. The FCC Should Not Adopt A Presumption That An Existing Video Provider Does Not Have The Legal Right To Remain On The Premises.

A. A Presumption That The Incumbent Cable Operator Has No Right To Remain In An MDU Would Effectively Preempt The Operator's Rights Under State Law.

The Further Notice is largely concerned with the "procedural mechanisms" for quickly disposing of inside wiring that the cable operator may no longer use for cable service.[2/] The FCC states that it will not attempt "to preempt an incumbent's ability to rely upon any rights it may have under state law."[3/]

The Further Notice, while expressly disavowing any intent to preempt state law, also seeks comment, in the same paragraph, on whether to adopt "a presumption that the incumbent does not possess an enforceable legal right to maintain its home wiring on the premises (and therefore that our proposed procedures would apply), unless the incumbent can adduce a clear contractual or statutory right to remain."[4/] Thus, unless the cable operator affirmatively establishes its rights under state statute or contract, it will lose its wiring under the "procedures" established by federal regulation.

However, if the FCC adopts a presumption for purposes of triggering procedural mechanisms for disposing of home run wiring that the existing cable operator does not have a right to remain on the MDU premises, it would in fact be interfering with the operation of state

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[2/] Further Notice ¶ 34; see id. ¶¶ 32 ("We believe that these procedural mechanisms will not create or destroy any property rights . . . ."), 47 ("the rules we propose do not grant MDU owners any additional rights, but simply establish a procedural mechanism for MDU owners to enforce rights they already have").

[3/] See id. ¶ 34.

[4/] Id.

access-to-premises statutes, contract law and common law.[5] The proposed procedures have definite substantive consequences -- the surrender of a cable operator's inside wiring -- and thus should not be presumed to operate prior to a determination by a competent state court as to the incumbent's rights if the incumbent seeks such a determination.

State laws include adopted such presumptions only where appropriate to the circumstances of their particular state. A federally imposed presumption is thus tantamount to a preemptive federal act that would upset the careful balance of interests crafted by legislatures, administrative agencies and courts in 50 states, each of which has independently weighed the affected interests of tenants, landlords, cable operators, and cable competitors in that state. In some states, such as New Jersey, Connecticut and New York, such a presumption would abridge the rights of cable subscribers because the access-to-premises statute gives the right to service by a franchised cable operator to the tenant as well as the cable operator.[6]

B. The FCC Should Not Adopt a Presumption That Would Undermine State Access-To-Premises Statutes.

States with access-to-premises statutes are normally highly urbanized states such as New York, New Jersey, Connecticut and Massachusetts that have a high concentration of MDUs. They are the states that have the greatest familiarity with issues of MDU tenant welfare. They have made a sound and considered policy choice as to what benefits MDU tenants are entitled that should not be uprooted by an FCC presumption. To interfere with such basic state decisions in the critical state area of landlord-tenant relations would be a dramatic, and unnecessary, act on the part of the FCC.

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[5] See id. ¶ 34 (seeking comment on adopting presumption).

[6] See N.J. STAT. ANN. § 48:5A-49 (West Supp. 1997); N.Y. PUB. SERV. LAW § 228

The FCC's proposed presumption would clearly undermine the effectiveness of state access-to-premises statutes. While Cablevision believes that such statutes in the states in which it operates clearly give it the right to remain in an MDU even where a new provider comes into it, this issue may well be contested by landlords seeking to obtain premiums from a new video provider. If the Commission adopts such a presumption, it will be cited by the landlord and cloud issues that should be decided solely on the basis of state laws.

The FCC should not attempt to weaken such statutes, because they promote subscriber choice and two-wire competition. Direct two-wire video competition in MDUs will spur innovation, put downward pressure on prices, and maximize consumer welfare. Such competition is only possible if cable operators have ongoing direct access to MDU subscribers and control over their own facilities where the cable operator has a statutory or contractual right to maintain its wiring on the premises.

In this vein, the FCC has severely misconstrued cable operators' arguments and evidence regarding two-wire competition in access-to-premises states. Cable operators such as Cablevision and Time Warner did not argue that two-wire competition in access-to-premises states demonstrates that MDU owners favor two-wire competition. Rather, Cablevision, as did Time Warner, submitted evidence that two-wire competition was physically possible, as shown by its experience in states such as New York where MDU owners cannot prevent the franchised cable operator from remaining in the building.[7] Competitors' and landlords' arguments that two

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(McKinney Supp. 1997) ("Landlord-tenant relationship"); CONN. GEN. STAT. § 16-333a (1994).

[7] See Further Notice ¶¶ 27-30; see also N.Y. PUB. SERV. LAW § 228 (McKinney Supp. 1997).

wires running through a building to each apartment is not feasible is totally belied by this evidence.

The FCC concludes that cable operators' evidence regarding two-wire competition in access-to-premises states does not affect the need for incentives to landlords to switch providers in non-access-to-premises states. But the Commission should instead be promoting incentives to landlords in other states to promote multiple-wire competition, as Cablevision and Time Warner have shown exists in access-to-premises states. As discussed below, one such incentive would be to bar the availability of the FCC's proposed procedures for disposal of inside wiring where the landlord receives a premium from a new entrant seeking to take over exclusive video service for the building.

Landlords often refuse to allow a second wire in states without access-to-premises statutes, not because they are concerned about physical problems of running two wires through the building, but because they elevate revenues from auctioning off the whole building over giving their tenants an ongoing choice between two providers. The result is that video providers' relationships with landlords and building managers, usually a financial relationship, rather than one based on price, quality and new services, will dictate broadband service decisions. State access-to-premises statutes discourage auctions and kickbacks, and recognize that the franchised cable operator has a duty of universal service under its franchise, as opposed to other providers who may simply try to "cherry-pick" certain high income MDUs.

C. Both Incumbent Cable Providers And The Public Will Be Harmed By Such A Presumption.

A presumption that cable operators do not have a legal right to remain on the premises and continue to serve tenants in the building would unreasonably distort clearly contemplated benefits under state law and contracts that cable operators have relied upon in their investments and business planning, without any countervailing public benefits. In some access-to-premises states, if the cable operator is forced to sell its wire to the new entrant, because it is presumed to not have a right to remain on the premises, then its universal service obligations will require it to rewire the building if a single tenant requests the cable operator to provide video services in the future. The cable operator likely will not be adequately compensated under the extreme pressure of the FCC's proposed deadlines for selling, abandoning or pulling the incumbent's existing wiring. The adverse consequences of such a forced choice will be compounded if the once-incumbent cable operator is required to reinstall at full cost what was taken from it at a below-cost price.

The FCC's proposal fails to take into account that many cable operators – including Cablevision – use or plan to use their existing wiring for a host of other advanced video and telecommunications services. Cablevision's advanced cable plant, in use in most of its territory, carries 750 MHz of capacity, which represents 200 MHz of additional capacity beyond that needed to distribute video programming services. This permits the company to provide additional services to subscribers. Even if a subscriber decided to terminate Cablevision's video service, the inside MDU wire could still be used by Cablevision to deliver other services to the same subscriber, such as access to the Internet, access to electronic databases, home banking and other information services, and even telephone service, as described below.

1. Pay-Per-View Competition

Cablevision is currently providing advanced, interactive video services on a number of its systems. Some Cablevision systems, including facilities in New York City, Yonkers, Long Island, Connecticut and parts of New Jersey, offer subscribers a wide array of advanced two-way services and capabilities, including an impulse technology that enables subscribers to purchase and receive movies and events without using the telephone. Subscribers need only push a series of buttons on their remotes or converter boxes to send signals back to the headend identifying the subscribers' service selection. The system's two-way capabilities also greatly enhance the quality of service delivered to subscribers.

Even if some Cablevision MDU subscribers opt to purchase conventional multichannel video programming services from another provider, retention of the two-way broadband capacity deployed by Cablevision gives it an opportunity to continue to serve as an alternative pay-per-view ("PPV") provider for such MDU subscribers. This in fact occurs today in some buildings where Cablevision competes head-to-head with another video provider in MDUs. Such a competitive scenario maximizes consumer choice, because the ongoing competition between the two providers stimulates innovative offerings and promote optimal customer service. Under the FCC's proposal, however, the forced surrender of its broadband wire to a competitor would preclude Cablevision from competing for PPV services in MDUs and deny these competitive programming benefits to MDU tenants.

2. High-Speed Internet Access and Other Advanced Services

Last year, Cablevision began rolling out its high-speed Internet service know as Optimum Online, which allows computer users to communicate and download information at speeds 50 times faster than is currently possible with conventional telephone-based modem technologies. Optimum Online goes far beyond simple Internet access, offering electronic mail, interactive fare, and timely updates regarding sports and traffic reports.

While Internet access and other advanced services offered by Cablevision complement its core video business, these services are clearly regarded as separate, sustainable businesses in their own right. Cablevision intends to offer all potential customers Optimum Online, regardless of whether such customers decline to subscribe to Cablevision's video service and purchase video programming from another provider.

High-speed Internet access and Internet programming services are not the only advanced service being offered by cable operators. Cable companies are beginning to provide subscribers with other electronic information services, such as home banking and electronic messaging. MDUs are particularly useful locales in which to target initial deployment of service offerings in these markets, since they offer concentrated access to a broad volume and variety of potential customers. Cablevision has made substantial investments in upgrading its network infrastructures in order to have the opportunity to offer these new services, which will be denied subscribers if an FCC-adopted presumption prevents Cablevision from exercising its right to remain in an MDU under state law or contractual agreement.

3. Local Exchange Telephone Competition

Cablevision is entering the local exchange marketplace. Cablevision already provides switched and dedicated telecommunications services in New York State and Connecticut through its Cablevision Lightpath subsidiary and plans to continue to expand this business. Lightpath has conducted successful technical field trials to provide residential telephone service over its hybrid-fiber coax ("HFC") network and is now offering telephony service over the HFC network in certain franchise areas.

Even if MDU subscribers decide to switch video providers, Cablevision's investment in broadband plant and development of competitive local exchange operations provide it with an opportunity to continue to serve the telephony needs of such subscribers. However, if hallway wiring, riser cables and other broadband plant must be surrendered to video competitors, Cablevision would not be able to use its MDU network facilities to provide telephone service to tenants in those buildings. The FCC's proposal threatens to undermine the very type of facilities-based local exchange competition that Congress expressly sought to promote in the 1996 Telecommunications Act.

The FCC says that under its procedures the cable operator's "ability to operate in the telephony market should be largely unaffected,"[8] since the FCC views the issue as merely a matter of switching packages of services – video, Internet access, data, and telephony – between exclusive providers. But it may be that a new MDU provider will provide only video. Or the package of services it provides may be of less appeal to certain tenants than the package of the incumbent cable provider. It is bad public policy for the FCC to force consumers to choose one package over another, or take services on a bundled basis as opposed to allowing them to pick and choose among services delivered over different wires by different providers.

Cablevision must be able to retain control over its existing internal network infrastructure within MDUs in order to retain the capacity to offer tenants these new services. An FCC-adopted presumption as to the rights cable operators have to maintain their wiring in an MDU under state law would upset the carefully crafted decision of states that have enacted access-to-premises laws to allow franchised cable operators to provide such services to MDUs.

II. The FCC Should Establish A Reasonable Default Price Where The Existing Video Provider Elects To Sell The Inside Wiring But The Parties Cannot Agree On A Price.

The FCC requests comment on "whether market forces would provide adequate incentives for the parties to reach a reasonable price. If market forces are insufficient, we seek

[8] Further Notice ¶ 46.

comment on how a reasonable price should be established."[9] The FCC proposes to adopt broad guidelines, a default price, or a formula for determining the price.[10]

The FCC is correct that such incentives are needed. Market forces are practically nonexistent under the FCC's proposed procedural mechanisms for disposing of existing cable wiring. Negotiations will therefore rarely, if ever, produce a reasonable price and will always disadvantage the incumbent cable operator that is being forced to dispose of its wiring. The FCC should adopt a mechanism to ensure a fair price, and the most workable mechanism would be a default price if the parties cannot reach an agreement.

A. A Reasonable Default Price Is Necessary.

The FCC's short time frame between notice to the existing cable operator and the operator's opportunity to elect to sell or remove the wiring will often leave insufficient time to agree on a commercially reasonable price. Absent such agreement, the cable operator must either abandon the wiring and give the new video provider or landlord a windfalls or undergo expensive removal procedures.

The MDU owner and new entrant, on the other hand, are well aware that the incumbent cable operator's options are limited and costly. They therefore have no adequate incentives to reach a fair price. The MDU owner or replacement video provider can obtain the wiring for an unreasonably low price because the price will take into account the existing cable operator's cost of removal. Where it will be more expensive for the existing cable operator to remove the wiring than to abandon it, MDU owners and new video providers will refuse to negotiate and will get the wiring for free.

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[9] Further Notice ¶ 37 (building by building); see id. ¶ 40 (unit by unit).

Because the FCC's proposed procedures will create an artificial negotiating environment heavily stacked against the owner of the inside wiring, the FCC should establish a default price if the parties cannot reach an agreement. A default price will soften the loss of facilities investment shouldered by existing operators. More importantly, it will encourage more economically rational behavior. An existing cable operator that effectively has a "quitclaim" price will not be forced to pull or abandon the wire where the parties do not reach agreement either because of the short time deadlines or because the other parties take advantage of the existing operator's stark choice to pull it, sell it or abandon it. With such a price, a cable operator may also have less reason to litigate its continued right to maintain its wire in the building.

Without a default price, new entrants would target MDUs where existing wiring would be most expensive for the incumbent to remove. This would allow new entrants to obtain the wiring below replacement cost or even for free. Moreover, the prospect of losing existing wiring at below its investment cost would also discourage many cable operators from wiring new MDUs or upgrading their existing wiring.

Cablevision has in fact recently been faced with such a stark choice in deciding whether to upgrade the wiring in several of its MDU complexes. If the new wiring is subject to being turned over to a competitor without fair compensation, Cablevision may choose to leave tenants with older wiring for the next few years rather than give a windfall to new competitors. Such a federal disincentive to modernize cable plant in MDUs does not benefit the public.

10/ Id. ¶ 37.

In comparison with the other proposals in the Further Notice to ensure fair price negotiations,[11] a default price better promotes competition. A default price is unambiguous and does not require a third party to determine that the resulting price is fair and reasonable or that the FCC's guidelines or "general rule or formula,"[12] were being correctly followed. These alternatives would slow down competitive entry. If the FCC's goal is truly not to have cable operators remove their wiring but instead leave it in place to promote competition and encourage commercially reasonable behavior, it should set what would serve as a fair quitclaim price.

B. The Default Price Should Be At Least $150 Per Unit Passed.

The default price should reflect the cost to replace inside wiring, which would be at least $150 per unit passed. The $150 figure represents the low end of reasonable estimates of replacement cost submitted in the record of this proceeding not only by cable operators, but also by DBS and SMATV operators themselves.

As Cablevision previously has demonstrated in this proceeding, in New York "the cost of installing hallway wire molding distribution systems [is] roughly $150 for each individual unit within an MDU."[13] That cost is actually higher in other areas served by Cablevision, reaching $200 in Hudson County, New Jersey and $300 in Boston.[14]

Ironically, several of the non-cable participants in this proceeding have actually contended that the replacement cost of inside wiring is substantially higher than $150 per unit

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[11] See Further Notice ¶ 37.

[12] Id.

[13] Attachment 1 to Ex Parte Letter from Elizabeth A. Losinski, Director of Regulatory Affairs, Cablevision, at 1 (Feb. 5, 1997), attached to Ex Parte Letter from Frank W. Lloyd, Esq., to William F. Caton, Acting Secretary, FCC (Feb. 11, 1997).

[14] Id.

passed. For example, according to ICTA, on whose proposal the FCC seeks comment, "the fixed costs involved in installing a complete stand-alone system at an MDU is [sic] approximately $500 per passing . . . ."[15] An attorney representing OpTel estimated that the cost for "prewire and distribution" where a SMATV operator must completely replace existing cable plant is $360 per unit passed.[16] As DIRECTV observed:

> The cost of wiring an MDU is considerable. . . . [T]he cost of installing a common DIRECTV antenna on a rooftop and the necessary wiring inside the building to the cable lockbox can range from $75 to $300. This number does not include the cost of duplicating the home run. To replicate that wiring would add substantially to the total cost on a per unit basis.[17]

And the Director of Commercial Business for DBS operator USSB has estimated that "wiring costs can range from $50 to $600 per unit passed depending on the building."[18]

These non-cable video providers submitted these estimates or made those comments in the press to demonstrate that it would be very expensive for them to provide their own competing wire, and to argue that they should be allowed instead to obtain cable operators' existing wiring. While that latter proposition is misguided, the evidence the SMATV and DBS interests have placed in the record does demonstrate graphically Cablevision's point that cable operators' existing wiring is a valuable investment. The FCC should take these higher estimates by cable's competitors of the value of this wiring into account in setting a default price.

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[15] See Ex Parte Letter from Deborah C. Costlow, Esq., to William F. Caton, Acting Secretary, FCC, Attachment at 3 (Feb. 6, 1997).

[16] Attachment A, Cost per Unit Analysis, Conversion with complete replacement of existing cable plant, attached to Ex Parte Letter from Henry Goldberg, Esq., to Chairman Reed E. Hundt, FCC, at 3 (Feb. 7, 1997).

[17] Ex Parte Letter from James F. Rogers, Esq., to William F. Caton, Acting Secretary, FCC, at 3 (Apr. 28, 1997).

In setting a default price, the FCC should consider replacement cost, rather than original cost less amortization. As noted, allowing new MVPDs and property owners to purchase the wiring for anything less than its replacement cost would bestow on them a substantial windfall. Aside from the unfairness inherent in such a windfall, it would encourage uneconomic behavior by new entrants.

Replacement cost is particularly appropriate because the existing cable operator, although no longer allowed to provide cable service to an MDU, may return to provide other services such as PPV, Internet access or telephone service. It is unfair enough that the existing operators must choose between removing, selling or abandoning their wiring when MDU owners order them to cease video service to the MDU. It would be even more unjust to not compensate the outgoing provider for the replacement value of sold wiring where that operator may, in the near future, be faced with rewiring the building at replacement cost either because of a statutory obligation of universal service or a desire to offer tenants a choice in Internet access, other two-way services, or telephony.

Units passed, rather than subscriber count, is the appropriate measure for setting a default price. Cable operators as well as new entrants wire the entire building at once, rather than installing wire to an individual unit when the tenant initiates service. Thus, because the new provider is purchasing wiring to the building, rather than just the wiring to the incumbent provider's subscribers, the new provider should pay based on units passed by the incumbent.

[18/] Alan Breznick, DBS Zeroes In on the MDU Market, CABLE WORLD, Mar. 27, 1997, at 59.

III. The FCC's Proposed Procedures For Disposing Of Inside Wiring Should Not Apply Where The MDU Owner Receives A Premium For Allowing A New Video Provider Into The Building.

The FCC's proposed procedural mechanisms apply whenever an MDU owner seeks to replace one video provider with another, without regard to the MDU owners' motivation for doing so. The Further Notice rejects cable operators' warnings that the FCC should not afford landlords too much power to assume a gatekeeper function, on the assumption that in any areas "where the real estate market is competitive it will discourage MDU owners from ignoring their residents' interests."[19] This reasoning fails to account for areas where the MDU real estate market is not competitive. More importantly, its basic premise, that landlords even in competitive real estate markets will elevate their tenants' interests above the landlord's interest in obtaining a premium or kickback for granting exclusivity, is faulty.

The FCC should proceed from the premise that the tenant, and not the landlord, is the customer in MDUs. The FCC should also recognize that MDU owners do not always act in the interest of their tenants, and could, and do, at least in some cases, select new providers based solely on the availability of a premium for the right to serve the building. The FCC's proposals afford MDU owners substantial bargaining power when negotiating to obtain the wiring of cable operators who must vacate the premises. If the FCC adopts its proposals, some of this premium may reflect the fact that the MDU owner or the new MVPD will acquire the exiting cable operator's wiring at below-market rates.

The FCC should modify its proposals to lessen incentives to landlords to act contrary to the interests of video subscribers in their MDUs, or at least insure that MDU owners' substantial

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[19] Further Notice ¶ 47.

advantage over incumbent providers in the FCC's proposed procedures is not available when personal gain is the likely motivation for their decision to switch providers.

The FCC can modify its proposals to discourage a landlord from choosing a video provider based upon the availability of a premium or kickback by declining to allow it to benefit from the proposed FCC procedures where it auctions the building or otherwise receives a premium from the new video provider above any anticipated damage to the building from making the switch. Such a condition for invoking the procedures proposed by the Further Notice would ensure that the substantial advantage to MDU owners conferred by the procedures would only be used to further subscriber choice.

CONCLUSION

For these reasons, Cablevision asks the Commission to modify its proposals regarding the disposition of home run wiring. The FCC should not adopt presumptions that would upset cable operators' existing rights under state laws, should set a default price of at least $150 per unit passed when parties cannot agree on a price, and should limit its procedures to situations where the landlord does not receive a premium from the new provider in exchange for access to the MDU.

Respectfully submitted,

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